

III-89-14RC
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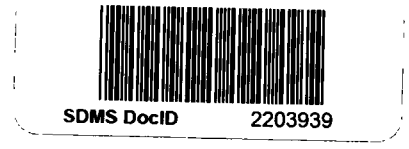
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CA 150

UNITED STATES OF AMERICA,

Plaintiff,

v.



HERCULES INCORPORATED,
ALLIED-SIGNAL INC.,
AMERICAN CAN CORPORATION,
AMERICAN CYANAMID COMPANY,
AMOCO CHEMICAL CORPORATION,
AVON PRODUCTS, INC.,
CHAMPLAIN CABLE CORPORATION,
CHRYSLER CORPORATION,
CONGOLEUM CORPORATION,
E.I. DU PONT DE NEMOURS & CO., INC.,
GENERAL MOTORS CORPORATION,
ICI AMERICAS, INC.,
JOHNSON CONTROLS, INC.,
MOTOR WHEEL CORPORATION,
OCCIDENTAL CHEMICAL CORPORATION,
SCA SERVICES, INC.,
STANDARD CHLORINE OF DELAWARE, INC.,
WASTE MANAGEMENT OF DELAWARE, INC.,
and WITCO CORPORATION,

Defendants.

C.A. No. 89-562-LON

FIRST AMENDED COMPLAINT

The United States of America, by authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), for its First Amended Complaint against defendants, states as follows:

PRELIMINARY STATEMENT

1. This is a civil action under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), for

reimbursement of costs incurred by the United States in response to the release and threat of release of hazardous substances into the environment at the Delaware Sand and Gravel Superfund Site located in New Castle County, Delaware ("the Site" or "DS&G").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1345 and 42 U.S.C. §§ 9607(a), 9613(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b).

GENERATOR DEFENDANTS

4. Defendant Hercules Incorporated is a Delaware corporation which, at times relevant to this action, was engaged in the business of chemical manufacturing in the State of Delaware.

5. Defendant Allied-Signal Inc., is a Delaware corporation which, at times relevant to this action, was engaged in the business of chemical manufacturing in North Claymont, Delaware and Marcus Hook, Pennsylvania. Allied-Signal Inc. is the successor in interest to Allied Chemical Corporation, which was engaged in the business of chemical manufacturing in the State of Delaware.

6. Defendant American Can Corporation is a Delaware corporation which, at times relevant to this action, was engaged in the business of manufacturing plastic bottles in the State of Delaware.

7. Defendant American Cyanamid Company is a Maine corporation which, at times relevant to this action, was engaged in the business of chemical manufacturing in the State of Maryland.

8. Defendant Amoco Chemical Corporation is a Delaware corporation which, at times relevant to this action, was engaged in the business of chemical manufacturing in the State of Delaware.

9. [5] Defendant Avon Products, Inc., is a New York corporation which, at times relevant to this action, was engaged in the distribution and sale of cosmetics and other products in the State of Delaware.

10. [6] Defendant Champlain Cable Corporation, formerly known as Haveg Industries, Inc., is a Delaware corporation which, at times relevant to this action, was engaged in the business of chemical manufacturing in the State of Delaware.

11. [7] Defendant Chrysler Corporation is a Delaware corporation, which at times relevant to this action, was engaged in the business of automobile manufacturing in the State of Delaware.

12. Defendant Congoleum Corporation is a Delaware corporation which, at times relevant to this action, was engaged in the business of manufacturing floor coverings and related products in Marcus Hook, Pennsylvania.

13. [8] Defendant E.I. du Pont de Nemours & Co., Inc., is a Delaware corporation which, at times relevant to this

action, was engaged in the manufacture of chemicals in the State of Delaware.

14. [9] Defendant General Motors Corporation is a Delaware corporation, which at times relevant to this action, was engaged in automobile manufacturing in the State of Delaware.

15. [10] Defendant ICI Americas, Inc., is a Delaware corporation which, at times relevant to this action, was engaged in the business of chemical manufacturing in the State of Delaware. ICI Americas, Inc., is the successor in interest to Atlas Chemical Products, Inc., a former Delaware corporation which conducted business in the State of Delaware.

16. Defendant Johnson Controls, Inc., is a Wisconsin corporation doing business in the State of Delaware. Johnson Controls, Inc. is the successor in interest to Globe-Union, Inc., a Delaware corporation which, at times relevant to this action, was engaged in the business of manufacturing batteries in the State of Delaware.

17. Defendant Motor Wheel Corporation is an Ohio corporation which, at times relevant to this action, was engaged in the business of manufacturing wheels and rims for automobiles and light trucks in the State of Delaware.

18. Defendant Occidental Chemical Corporation ("Occidental") is a New York corporation which, at times relevant to this action, was engaged in the business of manufacturing chemicals. Occidental is the successor in interest to Diamond

Shamrock Chemical Corporation which manufactured chemicals in the State of Delaware.

19. Defendant Standard Chlorine of Delaware, Inc., is a Delaware corporation which, at times relevant to this action, was engaged in the business of chemical manufacturing in the State of Delaware.

20. [11] Defendant Witco Corporation ("Witco") is a Delaware corporation which, at times relevant to this action, was engaged in the business of manufacturing automobile-related products and chemicals in the State of Delaware.

TRANSPORTER DEFENDANTS

21. Defendant SCA Services, Inc. is a Delaware corporation which, at times relevant to this action, was engaged in the business of transporting and disposing of hazardous substances in the State of Delaware. SCA Services, Inc., is also the successor in interest to Stanley J. Twardus & Sons, Inc., a former Delaware corporation, which was engaged in the business of transporting and disposing of hazardous substances in the State of Delaware.

22. Waste Management of Delaware, Inc., formerly known as Trash Removers, Inc., is a Delaware corporation which, at times relevant to this action, was engaged in the business of transporting and disposing of hazardous substances in the State of Delaware.

GENERAL ALLEGATIONS

23. [12] At all times relevant to this action, the Site was a privately owned and operated landfill.

24. [13] From approximately 1957 through 1976, liquid, solid, and other hazardous substances were disposed of at the Site.

25. [14] At times relevant to this action, the Generator Defendants owned or possessed hazardous substances and arranged for the disposal of those hazardous substances.

26. [15] The Generator Defendants' hazardous substances were disposed of at the Site.

27. At times relevant to this action, the Transporter Defendants accepted hazardous substances from one or more of the Generator Defendants for transport to and disposal at the Site.

28. The Transporter Defendants selected the Site and disposed of one or more of the Generator Defendants' hazardous substances there.

29. [16] On or before November 1, 1979, EPA was notified by the State of Delaware of possible soil and groundwater contamination at the Site.

30. [17] Between November 1, 1979 and [March 1984] April 22, 1988, EPA conducted inspections, monitoring, evaluations, assessments, sampling, [and] analysis, and other removal actions at the Site, including, but not limited to, drilling monitoring wells, [and performing a preliminary site assessment] conducting a Remedial Investigation and Feasibility

Study ("RI/FS"), and issuing a Record of Decision ("ROD"),
pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

31. [18] Based upon the results of EPA's inspections, monitoring, evaluations, assessments, sampling and analysis, the Site was placed on the National Priorities List, 40 C.F.R. Part 300, Appendix B, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

32. [19] Hazardous substances detected at the Site include, but are not limited to, acetone, benzene, bis (2 chloroethyl) ether, 2-butanone, toluene, methyl ethyl ketone, phenol, trichlorofluoromethane, methylene chloride, 4-methyl-2 pentanone, ethyl benzene, xylene, 1,2 dichloroethane, naphthalene, trichloroethylene, 1,1,1-trichlorotethane, polychlorinated biphenols, arsenic, beryllium, cadmium, chromium, copper, iron, lead, nickel, manganese, and zinc.

[20. From approximately March 1, 1984, through May 31, 1984, EPA conducted an immediate removal at the Site, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, including, but not limited to, excavation, removal, and disposal of 1644 55-gallon drums containing various amounts of hazardous substances.]

33. [21] EPA incurred costs in excess of [\$750,000.00] \$2,160,139.36, in connection with the aforementioned inspections, monitoring, evaluations, assessments, sampling, analysis, and other [immediate] removal response actions conducted at the Site from November 1, 1979 through April 22, 1988.

CLAIM FOR RELIEF

34. [22] The United States herein incorporates by reference paragraphs 1 through 33, above, as if fully set forth below.

35. [23] The Delaware Sand and Gravel Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

36. [24] Each of the Defendants is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

37. [25] Each of the Generator Defendants, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances which they owned or possessed, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

38. [26] The Generator Defendants' hazardous substances were disposed of at the Site.

39. The Transporter Defendants accepted hazardous substances from one or more of the Generator Defendants for transport to and disposal at the Site, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

40. The Transporter Defendants selected the Site and disposed of hazardous substances accepted from one or more of the Generator Defendants at the Site.

41. [27] At all times relevant to this action, there was a release and threatened release of hazardous substances into

the environment at the Site within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

42. [28] The United States incurred costs authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, and as defined by Sections 101(23) and (25) of CERCLA, 42 U.S.C. § 9601(23) and (25), as a result of the release or threat of release of hazardous substances from the Site.

43. [29] The United States' actions at the Site from November 1, 1979 through April 22, 1988 [as described in paragraphs 17 and 20, above,] were "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

44. [30] The costs incurred by the United States as a result of the response actions described herein [in paragraphs 17 and 20, above,] were incurred in a manner not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

45. [31] Each Defendant is jointly and severally liable to the United States for the payment of all costs incurred by the United States as a result of the response actions described herein, [in paragraphs 17 and 20, above] pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

WHEREFORE: the United States of America requests that the Court:

A. Enter judgment on behalf of the United States and against Defendants, jointly and severally, for all costs incurred by the United States in connection with inspections, monitoring,


evaluations, assessments, sampling, analysis, and other
[immediate] removal response actions conducted at the Delaware
Sand and Gravel Site as described herein, [in paragraphs 17 and
20, above] together with interest and all costs of enforcement;

B. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C.
§ 9613(g)(2), enter a declaratory judgment on liability for other
response costs or damages that will be binding on any subsequent
action or actions to recover such further response costs or
damages; and,


C. Order such other and further relief as the Court
deems just and proper.

Respectfully submitted,

RICHARD B. STEWART
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice


MICHAEL D. MCINTYRE, Attorney
Environmental Enforcement Section
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044
(202) 514-5471

WILLIAM C. CARPENTER, JR.
United States Attorney
District of Delaware



PATRICIA C. HANNIGAN
Assistant United States Attorney
J. Caleb Boggs Federal Building
844 King Street, Room 5110
Wilmington, Delaware 19801
(302) 573-6277

OF COUNSEL:

MARIA P. VICKERS
Assistant Regional Counsel,
United States Environmental
Protection Agency-Region III
841 Chestnut Street
Philadelphia, Pennsylvania 19107

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STANDARD CHLORINE OF DELAWARE, INC.,
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and WITCO CORPORATION,

Defendants.

CERTIFICATE OF SERVICE

I, Kent A. Jordan, Assistant United States Attorney for the District of Delaware, and a member of the Bar of the United States District Court, hereby certify that I caused to be mailed on December 28, 1990, two copies of the First Amended Complaint to:

Richard D. Kirk, Esquire
Morris, James, Hitchens & Williams
222 Delaware Avenue
P.O. Box 2306
Wilmington, Delaware 19899
Attorney for Hercules Incorporated
and Champlain Cable Corporation

James R. Leonard, Esquire
Potter, Crosse & Leonard
First Federal Plaza, Suite 200
P.O. Box 514
Wilmington, Delaware 19899
Attorney for Avon Products, Inc.

William J. Cattie, III, Esquire
Heckler & Cattie
200 W. Ninth Street
P.O. Box 128
Wilmington, Delaware 19899
Attorney for Chrysler Corporation

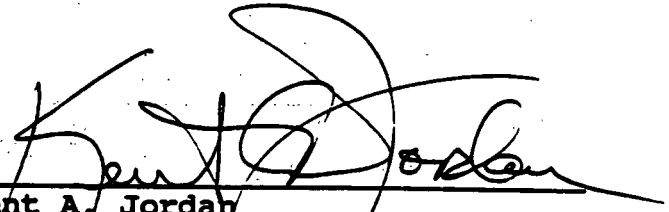
John W. Noble, Esquire
Parkowski, Noble, & Guerke
116 W. Water Street
P.O. Box 598
Dover, Delaware 19903
Attorney for E.I. duPont
de Nemours & Co., Inc.

Norman D. Griffiths, Esquire
Legal Department
E.I. duPont de Nemours & Co., Inc.
DuPont Building
Wilmington, Delaware 19898
Attorney for E.I. duPont
de Nemours & Co., Inc.

James McC. Geddes, Esquire
Ashby, McKelvie & Geddes
One Rodney Square
P.O. Box 1150
Wilmington, Delaware 19899
Attorney for General
Motors Corporation

Joseph Kelly, Esquire
ICI Americas, Inc.
New Murphy Road and Concord Pike
Wilmington, Delaware 19897
Attorney for ICI Americas, Inc.

John C. Phillips, Jr., Esquire
Phillips & Snyder
Suite 800
300 Delaware Avenue
P.O. Box 90
Wilmington, Delaware 19899
Attorney for Witco Corporation



Kent A. Jordan
Assistant United States Attorney
Room 5110 Boggs Federal Building
844 King Street
Wilmington, Delaware 19801

December 28, 1990

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DELAWARE COURT
DISTRICT OF DELAWARE